Supreme Court, U.S.
FILED
JAN 21 1999
CLERK

No. 98-1010

In The

Supreme Court of the United States

October Term, 1998

UNITED STATES ex rel. PAUL,

Petitioner,

v.

PARSONS, BRINCKERHOFF, QUADE & DOUGLAS, INC., *et al.*,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

BRIEF IN OPPOSITION FOR RESPONDENT BATTELLE MEMORIAL INSTITUTE, PROJECT MANAGEMENT DIVISION

FREDERICK ROBINSON*
FULBRIGHT & JAWORSKI L.L.P.
801 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
(202) 662-0200
Counsel for Respondent Battelle Memorial Institute, Project Management Division
**Counsel of Record*

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QUESTIONS PRESENTED

I. Whether the district court erred in refusing to remand Petitioner's cause of action to the Texas state court from which it was removed pursuant to 28 U.S.C. § 1441?

II. Whether the imposition of sanctions by the United States Court of Appeals for the Fifth Circuit, pursuant to Rule 38 of the Federal Rules of Appellate Procedure, was proper when the Fifth Circuit dismissed Petitioner's prior appeal as frivolous and warned Petitioner of the imposition of sanctions if another frivolous appeal was filed?

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JURISDICTION

A final decision was issued by the United States District Court for the Southern District of Texas on July 1, 1997 and Petitioner's appeal was dismissed by the United States Court of Appeals for the Fifth Circuit on July 10, 1998. *United States ex rel. Paul v. Parsons, Brinkerhoff, Quade & Douglas, Inc.*, Civil Action No. 97-1004 (S.D. Tex. July 1, 1997), *appeal dismissed*,149 F.3d 1179 (5th Cir. 1998) (unpublished opinion) (per curiam). Petitioner filed the instant Petition for Writ of Certiorari ("Petition").

Although this Court has discretion to review this case under Supreme Court Rule 10 and 28 U.S.C. § 1254, Respondent Battelle Memorial Institute ("BMI") continues to assert – as it did before the district court and the Fifth Circuit – that the federal courts lack subject matter jurisdiction over this case. Briefly, under the False Claims Act ("FCA"), the federal courts lack jurisdiction over any cause of action arising prior to 1986 if the "action is based on evidence or information the Government had when the action was brought." 31 U.S.C. § 3730(b)(4) (1982), *amended by* 31 U.S.C. § 3730(e)(4) (1994). For claims arising after 1986, the courts have no jurisdiction over actions based upon publicly disclosed allegations or transactions unless the relator is the "original source" of that information. 31 U.S.C. § 3730(e)(4) (1994). As BMI asserted before the lower courts, Petitioner's FCA suit contains no information that the Government did not have when the action was brought, all of Petitioner's allegations had been publicly disclosed when the action was brought, and Petitioner is not an "original source." Consequently, although Paul's claim arose under the FCA and was

properly removed to federal court, his action was properly dismissed for lack of subject matter jurisdiction.

PROCEDURAL HISTORY

BMI is a non-profit charitable trust organized as a non-profit corporation under the laws of the State of Ohio.[1] Its primary activity is the performance of research, development, management, and technical services on a contract basis for industrial, federal, state, and local governmental clients. Petitioner Paul is an engineer who, in 1982, worked for Respondent PB-KBB, Inc. ("PB-KBB") one of two companies constituting a joint venture that was a subcontractor to BMI. The joint venturers were Respondents Parsons, Brinckerhoff, Quade & Douglas ("PBQD"), a New York corporation, and PB-KBB, a Delaware corporation.

On August 10, 1992, Paul filed a complaint in the United States District Court for the Southern District of Texas under the *qui tam* provisions of the FCA, 31 U.S.C. § 3730(b) (1994), against PB-KBB and PBQD. On September 11, 1992, Paul filed a *qui tam* complaint against BMI

[1] In addition to BMI, a listing of the parties in the lower court proceedings, as required by Rule 14.1(b) of the Supreme Court Rules, includes: (1) Petitioner Dilip Kumar Paul ("Paul"); (2) Respondent P.B.-K.B.B., Inc. ("PB-KBB"); and (3) Respondent Parsons, Brinkerhoff, Quade & Douglas, Inc. ("PBQD"). Pursuant to Rule 29.1 of the Supreme Court Rules, BMI states that it has no parent companies, however, it has two non-wholly owned subsidiaries: (1) Geosafe Corporation; and (2) Research Insurance Company Limited. Both of these subsidiaries are approximately 99% owned by BMI.

containing virtually identical allegations. On April 1, 1993, pursuant to 31 U.S.C. § 3730(b)(4)(B), the United States filed a Notice of Election Not to Intervene in this action. On July 14, 1993, the district court ordered the consolidation of Paul's complaint against PBQD and PB-KBB with the action against BMI. The district court subsequently granted BMI's motion to dismiss. *United States ex rel. Paul v. Parsons, Brinkerhoff, Quade & Douglas, Inc.*, 860 F. Supp. 310, 372 (S.D. Tex. 1994).

On August 30, 1994, Paul filed a notice of appeal to the United States Court of Appeals for the Fifth Circuit. On April 28, 1995, the Fifth Circuit affirmed the district court ruling. *United States ex rel. Paul v. Parsons, Brinkerhoff, Quade & Douglas, Inc.*, 53 F.3d 1282 (5th Cir. 1995) (unpublished opinion).

Thereafter, Paul filed a motion under Rule 60(b) of the Federal Rules of Civil Procedure, in the district court, on July 17, 1995, seeking relief from the Court's earlier order dismissing Paul's *qui tam* suit on the basis that Paul's action was barred by *res judicata*. On August 9, 1995, the district court summarily denied Paul's Rule 60(b) motion. *Paul*, Civil Action No. H-92-2429 (S.D. Tex. August 9, 1995).

On September 6, 1995, Paul filed a Notice of Appeal, in the United States Court of Appeals for the Fifth Circuit, attempting to reargue many of the matters previously addressed by the Fifth Circuit. While the appeal of the district court's denial of this motion under Rule 60(b) of the Federal Rules of Civil Procedure was pending, Paul

filed, on December 12, 1995, a Petition for Writ of Certiorari in the United States Supreme Court. In that Petition, Paul sought review of the district court's decision dismissing his case. On January 22, 1996, the Court denied Paul's Petition. *United States, ex rel. Paul v. Parsons, Brinkerhoff, Quade & Douglas, Inc.*, 116 S.Ct. 817 (1996).

Subsequently, on April 26, 1996, the Fifth Circuit issued its opinion affirming the district court's denial of the motion under Rule 60(b) of the Federal Rules of Civil Procedure. *United States, ex rel. Paul v. Parsons, Brinkerhoff, Quade & Douglas, Inc.*, 85 F.3d 624 (5th Cir. 1996). The Fifth Circuit further admonished Paul that:

> any additional frivolous appeals filed by him will invite imposition of sanctions, Paul is further cautioned to review any pending appeals to ensure that they are not frivolous because they have been previously decided by this court.

Id. Paul's second appeal was accordingly dismissed and a sanctions warning issued.

Despite the Fifth Circuit's clear warning that "his appeal is frivolous and is dismissed" Paul has again filed a Petition for Writ of Certiorari in this Court. On October 7, 1996, this Court denied Paul's Petition. *United States, ex rel. Paul v. Parsons, Brinkerhoff, Quade & Douglas, Inc.*, 117 S.Ct. 181 (1996).

Undaunted, Petitioner filed a lawsuit in Texas state court on December 5, 1996. Paul alleged that BMI, PB-KBB, PBQD, and Paul Boulon violated the Federal False Claims Act. Paul also alleged that the prior state court judgment was invalid because the defendants, except for BMI, used fraud and deception at his original state court

trial. This suit was timely and properly removed to the United States District Court for the Southern District of Texas by BMI, PB-KBB, PBQD, Anson D. Phipps, and Paul Boulon. Defendant Robert Wood consented to the removal by filing a demand for a jury trial several days after the Notice of Removal was filed. BMI filed a motion to dismiss Paul's claims based on res judicata. Paul filed a late motion for remand. On June 30, 1997, the District Court denied Paul's motion for remand and dismissed the case. Paul filed a motion for rehearing and summary judgment pursuant to Federal Rule of Civil Procedure 59. The District Court also denied this motion.

Ignoring the Court's previous warning, Paul filed an appeal with the Fifth Circuit. On July 10, 1998, the Fifth Circuit issued an opinion dismissing the appeal because it was frivolous. *Paul v. Parsons, Brinkerhoff, Quade & Douglas, Inc.*, 149 F.3d 1179 (5th Cir. 1998) (unpublished decision) (per curiam). Noting its previous warning to Paul on filing frivolous appeals, the Court granted Appellees' motion seeking an order requiring Paul to pay their damages and costs pursuant to Rule 38 of the Federal Rules of Appellate Procedure and ordered Paul to reimburse Appellees for their costs and reasonable attorneys' fees. Paul filed the instant Petition for Writ of Certiorari.

BACKGROUND FACTS

I. Contract History

From 1965 to the present, BMI has provided research and development services to the U.S. Department of Energy ("DOE") as the contractor operating the Pacific

Northwest Laboratories located in Richland, Washington. On April 28, 1978, BMI was assigned responsibility for the management of DOE's National Waste Terminal Storage Program. In particular, BMI was directed to and did establish a new Project Management Division responsible for (1) identification of potential sites with salt formations and/or other geological formations within the United States suitable for development for potential nuclear waste repositories, and (2) the coordination and direction of the development of criteria and specific technologies required for exploration, design, licensing, construction, operations, and monitoring of these repositories.

Effective June 14, 1982, BMI and a joint venture (comprised of PBQD and PB-KBB) known as Parsons Brinkerhoff/P.B.-K.B.B. ("PB/PB-KBB") entered into a subcontract, pursuant to which PB/PB-KBB was to provide architectural and engineering design services relating to the construction of exploratory shafts that would be used to investigate the geological features of potential nuclear waste disposal sites in salt formations (the "Subcontract"). On October 7, 1982, DOE approved the Subcontract. Paul Boulon was a contract administrator employed by PB-KBB.

II. Litigation History

Paul was hired by PB-KBB in May 1981. In June 1982, he was assigned to work on the Exploratory Shaft Facility design, the project encompassed by the Subcontract. Paul alleges that he soon concluded the preliminary design specifications were inconsistent with requirements under federal mine safety standards. Paul claims that he

informed his supervisors, orally and in writing, of his concerns. According to Paul, these acts resulted in his transfer to another division at PB-KBB and, ultimately – twelve days after drafting a memorandum summarizing his concerns – to his discharge. Paul has brought five lawsuits arising out of his termination from PB-KBB.

In 1983, Paul brought a Title VII action in the United States District Court for the Southern District of Texas against PB-KBB, Civil Action No. H-83-3409, alleging that he was discharged on the basis of his national origin. That action was dismissed without prejudice by stipulation of the parties on June 7, 1984. Paul then filed an action under the Federal Mine Safety and Health Act of 1977 ("Mine Act"), 30 U.S.C. § 801 *et seq.* (1994), with the Secretary of Labor, wherein he argued that, in violation of § 815(c)(1) of the Mine Act, he was fired because of his safety complaints. *Paul v. P.B.-K.B.B., Inc.*, 3 MSHC 2006, 2007 (1985). The Secretary of Labor rejected Paul's claim. *Id.* Paul appealed the Secretary's decision to the Federal Mine Safety and Health Review Commission ("the Commission"). *Id.* at 2008. The Commission, however, upheld the Secretary's decision. *Id.* Paul then appealed the Commission's ruling to the United States Court of Appeals for the District of Columbia Circuit, which upheld the Secretary. *Paul v. Federal Mine Safety and Health Review Comm'n*, 812 F.2d 717, 718 & 720 (D.C. Cir.), *cert. denied*, 483 U.S. 1023 (1987).

Paul then brought an action in Texas state court, alleging that he was wrongfully discharged for his unwillingness to commit a criminal act. *Paul v. P.B.-K.B.B., Inc.*, 801 S.W.2d 229 (Tex. App. – Houston [14th Dist.] 1990, writ denied). In that action, Paul contended

that "the preliminary study [prepared by PB-KBB] called for one shaft rather than two and that this design 'could've killed people.' " *Id.* at 229. Paul argued that, as the engineer, he would be called upon to certify the plans and specifications, and doing so would be a violation of § 22.05 of the Texas Penal Code which proscribes "reckless conduct." *Id.* According to Paul, it was these objections to the project, that resulted in his termination. *Id.* at 230. After trial, the jury found that Paul was not fired solely because he refused to commit an illegal act. On appeal, the verdict was affirmed. *Id.* at 230.

Undeterred, Paul attempted to dress up his losing state-court action in new federal clothing by filing a complaint in the United States District Court for the Southern District of Texas. However, since the same operative facts underlay both actions, the district court dismissed his federal action based on the doctrine of *res judicata*. This ruling was affirmed by the Fifth Circuit and Paul's Petition for Writ of Certiorari denied by this Court. *Paul*, 860 F. Supp. 370 (S.D. Tex. 1994), *aff'd without op.*, 53 F.3d 1282, *cert. denied*, 116 U.S. 817 (1996).

Paul thereafter filed, in the district court, his motion for reconsideration of the order dismissing his federal complaint, pursuant to Federal Rule of Civil Procedure 60(b). This motion was denied by the district court, affirmed by the Fifth Circuit, and Paul's Petition for Writ of Certiorari was denied by this Court. *Paul*, H-92-2429 (S.D. Tex. August 9, 1995), *aff'd without op.*, 85 F.3d 624 (5th Cir.), *cert. denied*, 117 U.S. 181 (1996).

Undaunted, Petitioner filed a lawsuit in Texas state court on December 5, 1996. This suit was timely and

properly removed to the United States District Court for the Southern District of Texas. BMI filed a motion to dismiss Paul's claims based on *res judicata*. Paul filed a late motion for remand. On June 30, 1997, the District Court denied Paul's motion for remand and dismissed the case. Paul filed a motion for rehearing and summary judgment pursuant to Federal Rule of Civil Procedure 59. The District Court also denied this motion and Paul filed an appeal with the Fifth Circuit. On July 10, 1998, the Fifth Circuit dismissed the appeal because it was frivolous. *Paul v. Parsons, Brinkerhoff, Quade & Douglas, Inc.*, 149 F.3d 1179 (5th Cir. 1998) (unpublished decision) (per curiam). Paul filed the instant Petition for Writ of Certiorari in this Court.

SUMMARY OF ARGUMENT

Paul's petition, although presented in fourteen separate questions, only raises two basic issues in this Court, neither of which justifies the issuance of the writ of certiorari. The first issue is whether the United States District Court for the Southern District of Texas improperly refused to remand the case to state court after its removal. The refusal to remand was proper because the district court had jurisdiction under 28 U.S.C. § 1331 and the federal claims were separate and independent causes of action under 28 U.S.C. § 1441(c). Moreover, the case was properly removed because all of the defendants consented to the removal. Even though Robert Wood did not join the Notice of Removal, he consented to the removal when he filed a Jury Demand in federal court. In addition, all of Paul's claims were independently removable

because his lawsuit was a collateral attack on a prior federal court judgment.

The second issue is whether the United States Court of Appeals for the Fifth Circuit properly imposed a sanction, pursuant to Rule 38 of the Federal Rules of Appellate Procedure, that required Petitioner to reimburse the Respondents' for their costs and reasonable attorneys' fees incurred in defending against his appeal. The Fifth Circuit previously warned the Petitioner of the potential imposition of a sanction if Petitioner filed another frivolous appeal. The Fifth Circuit's order requiring Paul to pay costs and reasonable attorneys' fees in this case was proper since the Fifth Circuit dismissed Petitioner's appeal because it was frivolous.

The Petitioner's remaining questions basically attempt to argue that the district court erred in dismissing his case under the doctrine of *res judicata*. The district court's routine application of the doctrine of *res judicata* was proper and does not raise a significant issue requiring this Court's review. As there are no conflicting court decisions with the instant case and there are no important questions of federal law to be decided, settled, or that are in conflict with relevant decisions of this Court, Paul's Petition should be denied. *See* Rule 10 of the Supreme Court Rules.

ARGUMENT

I. The District Court Correctly Removed Paul's Current Case From Texas State Court.

In questions one through five and question thirteen of Paul's Petition, Paul basically argues that the United States District Court for the Southern District of Texas erred in removing his case from Texas state court. This case was properly removed because the federal court had jurisdiction under 28 U.S.C. § 1331 and the federal claims were separate and independent causes of action under 28 U.S.C. § 1441(c). Moreover, the case was properly removed because all of the defendants consented to the removal. In addition, all of Paul's claims were independently removable because his lawsuit was a collateral attack on a prior federal court judgment.

A. The Trial Court Had Jurisdiction Pursuant To 28 U.S.C. § 1441(b).

Paul filed his original petition in this case pursuant to the *qui tam* provisions of the False Claims Act, 31 U.S.C. § 3730, and styled his original petition as *United States of America ex rel. Dilip Paul vs. PB-KBB, Inc. et al.* Moreover, Paul specifically sought relief on behalf of the federal government under the False Claims Act, 31 U.S.C. §§ 3730, *et seq.* and alleged that BMI (and the other Federal Defendants) committed fraud on the United States Government.

Pursuant to 28 U.S.C. § 1331, the United States District Court for the Southern District of Texas had original jurisdiction over the federal claims asserted against BMI

under the *qui tam* provisions of 31 U.S.C. § 3730, *et seq.* Furthermore, the *qui tam* claims against BMI were separate and independent of Petitioner's state law claim, which requested that a prior state court judgment, to which BMI was not an actual party, be overturned because of fraud.

B. Removal Was Proper Under 28 U.S.C. § 1441(b) Because All Of The Defendants Consented.

Removal pursuant to 28 U.S.C. § 1441(b) requires the consent of each defendant. *See Doe v. Kerwood*, 969 F.2d 165 (5th Cir. 1992). Petitioner argues that removal was procedurally improper because defendant Robert Wood did not sign the Notice of Removal filed by defendants BMI, PB-KBB, PBQD, Anson Phipps and Paul Boulon. However, Robert Wood's signature was not necessary. As the District Court noted:

> . . . the Fifth Circuit has also explained that the consent requirement does not mean that each defendant must actually sign the original removal petition. Instead, consent requires merely that there must be some timely filed written indication from each served defendant, or from some person or entity purporting to formally act on its behalf in this respect and to have authority to do so, that it actually consented to such action. *Getty Oil Corp. v. Insurance Co. of N. Am.*, 841 F.2d 1254, 1262 n.11 (5th Cir. 1988).

United States ex rel. Paul v. PB-KBB, Inc. et al., District Court Order, No. H-97-1004 (S.D. Tex. July 1, 1997). Thus,

removal was proper because Robert Wood notice consented to the removal of this case when he filed a Demand for Jury Trial eight (8) days after the removal was filed.

C. Removal Was Proper Under 28 U.S.C. § 1441(c).

Paul's *qui tam* claims against BMI, in which he brought suit on behalf of the United States of America, clearly alleged different wrongs (fraudulent billing of the federal government) and an injury (to the federal government) that are separate and independent from the state common law wrong and personal injuries claimed in Paul's most recent state law action to set aside a state law judgment. BMI was not a party to the prior state court judgment and, furthermore, the "facts" alleged by Paul to show that fraud infected the prior state court judgment, have nothing whatsoever to do with the filing of claims under a federal contract. Clearly, Paul's federal action under the False Claims Act was "susceptible of adjudication separate and apart from" Paul's attack on the prior state court judgment, and it could have originally been brought in federal court. That is all section 1441(c) requires to make Paul's entire claim removable. *See* 16 Moore's Federal Practice ¶ 107.14[6][f] at 107-106 (3d ed. 1997). In this case, the removal petition was timely filed by all of the defendants to the separate and independent *qui tam* claims, and, thus, was procedurally proper under 28 U.S.C. § 1441(c). *See* 16 Moore's Federal Practice ¶ 107.11[d] at 107-34 ("If removal is based on a separate and independent claim . . . only those defendants who are defendants to the removable claim must join in the

removal notice."). Therefore, removal was proper and Paul's motions to remand were properly denied by the trial court.

D. Paul's Motion For Remand Was Not Timely Filed And Was Properly Denied.

Paul's Motion(s) for Remand were also properly denied because it was untimely filed. A motion to remand alleging a procedural defect must be filed within 30 days after filing of the Notice of Removal. 28 U.S.C. § 1447(c). The Notice of Removal in this case was filed on March 27, 1997. Paul's Motion to Remand, however, was not filed with the District Court until May 1, 1997 – thirty-five (35) days after the Notice of Removal was filed. Thus, Paul's Motion to Remand was not timely and was properly denied. *See* 28 U.S.C. § 1447(c); *see also Patin v. Allied Signal, Inc.*, 77 F.3d 782, 786 (5th Cir. 1996); *Pavone v. Mississippi Riverboat Amusement Corp.*, 52 F.3d 560, 566 (5th Cir. 1995).

E. Paul's Fraud Claim Is A Collateral Attack On A Prior Federal Court Ruling That Was Properly Removed To Federal Court.

Paul's attempt to file a state court action in order to circumvent the District Court's decision in *Paul v. PBQD*, 860 F. Supp. 370 (S.D. Tex. 1994), *aff'd without op.*, 53 F.3d 1282 (5th Cir. 1995), was also properly removed to federal court because it was a collateral attack on the District Court's ruling. A collateral attack on a prior federal court ruling is independently removable. *See Rivet v. Regions Bank of La., F.S.B.*, 108 F.3d 576, 586 (5th Cir. 1996).

II. The Fifth Circuit Correctly Awarded Costs And Attorneys' Fees Pursuant To Rule 38 Of The Federal Rules Of Appellate Procedure.

In question fourteen (14) of the Petition, Petitioner challenges the Fifth Circuit's imposition of a sanction upon him for filing a frivolous appeal and also contends that his constitutional right to due process has been violated. Paul's contentions are without merit. Despite two separate District Court rulings against him and despite the Fifth Circuit's previous warning of the possible imposition of sanctions, Paul continued his litigious odyssey, which now spans over fourteen (14) years, and voluntarily filed another appeal with the Fifth Circuit. The Fifth Circuit affirmed the District Court and dismissed Paul's appeal as frivolous. *See Fifth Circuit Order*, No. 97-20814 (July 10, 1998) (per curiam); *see also Ozee v. American Council on Gift Annuities, Inc.*, 110 F.3d 1082, 1097 (5th Cir. 1997) ("In this circuit, a frivolous appeal is either one that pursues legal points not arguable on the merits or one in which the result is obvious."). Fully aware of the history of litigation associated with the Petitioner, and noting that Paul had been previously warned that the filing of frivolous appeals would result in the imposition of a sanction, the Fifth Circuit granted Appellees' motion for an order requiring Paul to pay their damages and costs. Pursuant to Rule 38 of the Federal Rules of Appellate Procedure, the Fifth Circuit ordered Paul to reimburse the Appellees for their costs and reasonable attorneys' fees incurred in pursuing their appeal. Pursuant to the instructions of the Fifth Circuit, BMI filed a Motion for Attorneys' Fees and Costs for

costs and fees expended in defending against the frivolous appeal, which totaled three thousand three hundred ninety-six dollars and twenty-five cents ($3,396.25). Given the level of experience of counsel brought into the appeal and the relatively few hours expended on the same, the amount sought as a sanction by BMI against Paul was a reasonable amount for attorneys' fees and expenses in defending BMI against a frivolous appeal to the Fifth Circuit. *See, e.g., Williams v. Phillips Petroleum Co.*, 23 F.3d 930 (5th Cir.), *cert. denied*, 513 U.S. 1019 (1994) (awarding sanctions under Fed. R. App. P. 38 for bringing a frivolous appeal in an amount exceeding $23,000.00).

III. The District Court And Fifth Circuit Properly Applied The Doctrine Of *Res Judicata*.

In questions six through twelve of the Petition, Paul basically argues that the district court erred in dismissing his case under the doctrine of *res judicata*. In Petitioner's previous lawsuit, the United States District Court conclusively decided that all of Paul's current claims against BMI were barred by the doctrine of *res judicata*. *See Paul*, 860 F. Supp. at 372. The Fifth Circuit upheld the District Court's decision and issued a sanctions warning to Paul. This Court denied Paul's petition for writ of certiorari. *Paul*, 860 F. Supp. 370 (S.D. Tex. 1994), *aff'd without op.*, 53 F.3d 1282, *cert. denied*, 116 U.S. 817 (1996). In the case currently before this Court, Paul's fraud claims related to the state court judgment, which do not involve BMI, were identical to the fraud claims made in his prior lawsuit. Paul did not raise any new causes of action against BMI that have not been previously ruled upon. The District Court, once again, properly held that all of Paul's claims against BMI were barred by *res judicata*. *United States ex*

rel. Paul v. PB-KBB, Inc. et al., District Court Order, No. H-97-1004 (S.D. Tex. July 1, 1997) (unpublished order) ("Paul's claims in the current action are virtually indistinguishable from his prior claims and are therefore barred by *res judicata*."). The Fifth Circuit upheld the District Court and, once again, dismissed Paul's appeal as frivolous. *Paul v. Parsons, Brinkerhoff, Quade & Douglas, Inc.*, 149 F.3d 1179 (5th Cir. 1998) (unpublished decision) (per curiam) ("[W]e hold that the district court did not err in finding that Paul's claims are barred under the doctrine of *res judicata*."). The District Court's routine application of the doctrine of *res judicata* was proper and does not raise a significant issue requiring this Court's review.

CONCLUSION

As there are no conflicting court decisions with the instant case and there are no important questions of federal law to be decided, settled, or that are in conflict with relevant decisions of this Court, the petition for a writ of certiorari should be denied.

Respectfully submitted,

FREDERICK ROBINSON
FULBRIGHT & JAWORSKI, L.L.P.
801 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
202-662-0200

Counsel for Respondent
Battelle Memorial Institute
Project Management Division